

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

MARCUS MIAL,

Plaintiff,

VS.

STEPHEN O. SIMPSON, et al.

Defendants.

Civil No. 11-cv-921

March 23, 2015

TESTIMONY OF WITNESSES

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: WESTLAKE LEGAL GROUP
BY: THOMAS K. PLOFCHAN, JR.

FOR THE DEFENDANT: COOK CRAIG & FRANCUZENKO PLLC
BY: ALEXANDER FRANCUZENKO

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR
U.S. District Court
401 Courthouse Square, 5th Floor
Alexandria, VA 22314
(703)501-1580

INDEX OF WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT
J. Forsch	3		

1 (Thereupon, the following was heard in open
2 court at 2:43 p.m.)

3 THE COURT: Your first witness.

4 MR. PLOFCHAN: Thank you, Your Honor. We
5 call Ms. Forsch.

6 MR. FRANCUZENKO: Your Honor, may I have a
7 moment before --

8 THE COURT: Yes.

9 THEREUPON, JENNIFER FORSCH, having been duly
10 sworn, testified as follows:

11 THE WITNESS: Yes, ma'am.

12 THE COURT: You may proceed.

13 MR. PLOFCHAN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. PLOFCHAN:

16 Q. Ma'am, can you state your name for the judge and
17 the jury, please.

18 A. It's Jennifer Forsch.

19 Q. Okay. And, how are you employed?

20 A. With the Loudoun County Sheriff's Office.

21 Q. And, how long have you been employed there?

22 A. For eight years.

23 Q. Okay. So, that begins in 2007?

24 A. Yes, sir.

25 Q. And that would have been 3 years prior to this

1 incident?

2 A. Yes, sir.

3 Q. Okay. And did you work prior to -- did you work
4 in law enforcement prior to coming to Loudoun County?

5 A. Yes, sir.

6 Q. Okay. Where did you work?

7 A. In Gwinnett County, Georgia, Oceanside,
8 California.

9 Q. And, so you worked in two different locations in
10 law enforcement?

11 A. Yes.

12 Q. Okay. And where -- did you go to an academy?

13 A. Yes, sir.

14 Q. Okay. What academy did you go to?

15 A. To San Diego Regional Academy in California and to
16 Gwinnett County Police Academy, Georgia.

17 Q. Is that G-W-I-N-N-E-T-T?

18 A. Correct.

19 Q. Okay. Now, I take it that when you went to those
20 academies, you had some training; is that correct?

21 A. Yes, sir.

22 Q. And you had training in the use of force; is that
23 correct?

24 A. Yes, sir.

25 Q. Okay. And, you had training in the Constitution,

1 correct?

2 A. Yes, sir.

3 Q. And, you had training in compliance with orders;
4 is that correct?

5 A. Yes, sir.

6 Q. Okay. And, would you agree that Loudoun County
7 Sheriff's Office has a series of orders that govern the
8 conduct of the deputies?

9 A. Yes, sir.

10 Q. Okay. And are those called the General Orders?

11 A. Correct.

12 Q. And they also have regulations; is that correct?

13 A. I'm not understanding.

14 Q. Do they have anything else that governs the
15 conduct of deputies other than the General Orders?

16 A. They have policies and procedures.

17 Q. Okay.

18 MR. PLOFCHAN: Court's indulgence, Your
19 Honor.

20 BY MR. PLOFCHAN:

21 Q. Now, when you -- what is the function of a General
22 Order?

23 A. For the Sheriff's Office?

24 Q. Yes.

25 A. It is a guideline to help us on the calls and the

1 type of calls that we respond to.

2 Q. Are officers trained on them or just given them to
3 read?

4 A. It depends on the General Order.

5 Q. Okay. Have you been given General Order 534 on
6 domestic violence?

7 A. Yes, sir.

8 Q. Okay. Is that a guideline or is it -- is it --
9 let me rephrase that. Were you trained on that or were
10 you just given it to read?

11 A. I was trained on it, sir.

12 Q. Okay. And so what does that mean that you were
13 trained on it?

14 A. Meaning that I was given instruction on it. We
15 went over the General Order.

16 Q. Okay. And, when did you get this instruction?

17 A. I couldn't tell you a specific date.

18 Q. Okay. But this was a mandatory instruction,
19 correct?

20 A. Correct.

21 Q. All right. And, you had received that by
22 February 14th, 2010, correct?

23 A. Yes, sir.

24 Q. And, as a matter of fact, did you also get tested
25 on it after you received the training?

1 A. No, sir.

2 Q. There wasn't any follow up after that training
3 where they made -- orally asked you questions?

4 A. No, sir.

5 Q. Okay. Now, have you ever testified under oath in
6 this case before?

7 A. Yes, sir.

8 Q. Okay. And, do you recall being asked whether you
9 received instruction relative to this General Order in
10 the past?

11 A. Yes, sir.

12 Q. Do you recall what your answer was?

13 A. Yes, sir.

14 Q. Okay. And, did you -- have you ever recalled
15 whether or not that occurred on -- if you were asked --
16 whether that was asked on one occasion or more?

17 A. I could not tell you, sir.

18 Q. Okay.

19 MR. PLOFCHAN: Your Honor, if I -- Court's
20 indulgence. It's possible with the screen just to show
21 the officer or if not may I approach the officer?

22 THE COURT: You can show on the screen if
23 you'd like to use the deposition, just tell opposing
24 counsel page and line number.

25 MR. PLOFCHAN: Your Honor, I'm sorry. This

1 is just for refreshing the recollection. I didn't want
2 it to come up on the screen in front of the jury. That
3 was my --

4 THE COURT: All right. Well then why don't
5 you hand them the page if that's what you want to do.
6 Ask her to read the page and ask the question you want to
7 ask.

8 BY MR. PLOFCHAN:

9 Q. And, Deputy, I'm asking you to look at page 17.

10 A. Yes.

11 Q. And in that do you recall being asked if it was on
12 more than one occasion and you said you couldn't be
13 positive?

14 A. Correct.

15 Q. Okay.

16 MR. PLOFCHAN: And I'm sorry. I'm sorry,
17 Marshal. May I have that sheet. I apologize. Thank
18 you.

19 Q. Now, I'm going to ask you, what did you do to
20 prepare for your testimony today?

21 MR. FRANCUZENKO: Your Honor, I'm going to
22 object.

23 THE COURT: What's the objection?

24 MR. FRANCUZENKO: Attorney-client privilege.

25 MR. PLOFCHAN: I'm not asking what was said

1 to anyone. I'm just asking what she did. Did she talk
2 to her attorney? Did she read anything?

3 THE COURT: As long as she understands the
4 question was very precise. What did she do to prepare,
5 not what her lawyer told her to do or say.

6 BY MR. PLOFCHAN:

7 Q. What did you do to prepare?

8 A. I met with Mr. Francuzenko.

9 Q. Okay. Did you read any of your previous
10 statements with regard to this case?

11 A. Yes, I did.

12 Q. Okay. And, did you do anything else?

13 A. No, sir.

14 Q. Okay. Would you agree that when this -- when you
15 were deposed, it was actually on November 10th, 2011,
16 over 3 years ago, correct?

17 A. I would have to look at the date, but that sounds
18 familiar.

19 Q. This is page one of that deposition. Does that
20 refresh your recollection?

21 A. Yes, sir.

22 Q. Okay. And when was the date of that deposition?

23 A. November 10th, 2011.

24 Q. Okay. And now, would you agree November 10th,
25 2011, is about 20 months after the incident?

1 A. Correct.

2 Q. Okay. And, yet it's been 3 years and 4 months
3 since that deposition, correct?

4 A. Yes, sir.

5 Q. Okay. And would you agree that your memory was
6 better then than it is today with respect to this
7 incident?

8 A. It depends on the facts in the case, sir.

9 Q. So, can you just tell me why in 2011 you couldn't
10 tell and didn't know whether or not you'd been trained
11 more than once and today you're emphatic that you had not
12 been?

13 MR. FRANCUZENKO: Object, Your Honor. I
14 don't think that was her testimony.

15 THE COURT: I'll give you a chance to ask
16 questions when it's your turn.

17 Objection overruled.

18 THE WITNESS: Would you be able to repeat the
19 question for me.

20 BY MR. PLOFCHAN:

21 Q. Sure. I asked you very specifically whether you
22 had been trained more than once on the General Orders.
23 In 2011, you said you couldn't be positive and didn't
24 know and yet when I asked you that today, you said no, I
25 had not been.

1 And I want to know can you explain why supposedly
2 your memory is now better 5 years after the incident than
3 it was a year and 9 or 10 months after the incident?

4 A. I never said today I was not trained on the
5 General Orders.

6 Q. I asked you if you had been trained more than once
7 and you said no.

8 A. If you had read further in the deposition, there
9 are other times where I said one or more times possibly.

10 Q. I understand that, ma'am. So, why can you say
11 definitively no today 5 years after the incident, but a
12 year and a half after the incident, you were unsure?

13 What did you do that made your memory so good
14 5 years after the incident rather than when it wasn't so
15 good a year and 10 months after the incident?

16 A. I've been trained on the General Orders, yes. I
17 could not tell you exactly how many times.

18 Q. Can you --

19 THE COURT: Next question.

20 MR. PLOFCHAN: Yeah, I'll move on. I think I
21 made the point. Thank you.

22 BY MR. PLOFCHAN:

23 Q. Now, how long did your training last?

24 A. That I could not tell you, sir.

25 MR. FRANCUZENKO: Your Honor, I'm going to

1 object on relevance at this point.

2 MR. PLOFCHAN: Your Honor, one of the things
3 I think we have to -- that we want to establish is --

4 THE COURT: If you --

5 MR. PLOFCHAN: -- this is a highly-trained
6 officer.

7 THE COURT: If you want to focus in on this
8 case as opposed to general knowledge, that would be
9 helpful.

10 MR. PLOFCHAN: I'm sorry. Let me see if I
11 can ask it this way, Your Honor.

12 MR. FRANCUZENKO: Your Honor, and just if I
13 may, one more objection. I renew the objection that was
14 the subject of our motion in limine with regard to the
15 orders and I just ask that be part of the record.

16 THE COURT: All right.

17 BY MR. PLOFCHAN:

18 Q. Would you agree that the General Order with how to
19 handle a call to a home in an alleged domestic violence
20 case is General Order 534?

21 A. I would have to see it, sir.

22 Q. Okay.

23 A. Yes, it is, sir.

24 Q. Okay. And that's the -- if you can let --
25 Marshal, I'm going to ask her one follow-up question.

1 That is a copy of the document that was produced
2 at your deposition. Do you agree that that is the
3 five -- the General Order 534 that you previously
4 identified as a copy of Loudoun County Sheriff's Office
5 General Order 534?

6 A. It appears that it is, yes.

7 MR. PLOFCHAN: Your Honor, I'd like to move
8 that exhibit in. It's our Exhibit Number 36.

9 MR. FRANCUZENKO: Your Honor, objection.

10 THE COURT: All right. I think the objection
11 is one we made previously outside the hearing of the
12 jury.

13 MR. FRANCUZENKO: Yes, Your Honor.

14 THE COURT: All right. That objection is
15 overruled.

16 MR. PLOFCHAN: Thank you, Marshal.

17 BY MR. PLOFCHAN:

18 Q. Now, with regard to this General Order only, do
19 you agree that you had received at least 30 to 45 minutes
20 of training?

21 A. Yes.

22 Q. And, that at your sessions, written material was
23 distributed?

24 A. Yes.

25 Q. Okay. And, legal issues were discussed?

1 A. Yes, sir.

2 Q. Okay. And that if there were any questions that
3 affected the training in question or any court rulings
4 that affected the General Order that you would ordinarily
5 be trained with respect to any order that would have come
6 into place?

7 A. Yes, sir.

8 Q. Okay.

9 MR. PLOFCHAN: Court's indulgence.

10 Q. Now, are you free to violate a General Order as a
11 matter of your own discretion?

12 A. No, sir.

13 Q. Okay.

14 MR. PLOFCHAN: Now -- Your Honor, with the
15 Court's permission, since it has been admitted, I'd like
16 to put parts of the General Order on the screen.

17 THE COURT: All right.

18 MR. PLOFCHAN: Thank you.

19 BY MR. PLOFCHAN:

20 Q. Now, Deputy, can you see this on your screen?

21 A. Kind of, yes, sir.

22 Q. Okay. Now, would you agree that this is a General
23 Order that's been issued by the Loudoun County Sheriff's
24 Office with regard to domestic violence and related
25 offenses, correct?

1 A. Yes, sir.

2 Q. Okay. How is domestic -- how is it determined
3 whether or not something is a domestic violence case?

4 A. It all depends, sir.

5 Q. Pardon?

6 A. It all depends.

7 Q. Well, who makes that determination?

8 A. Ultimately, I do, sir.

9 Q. Okay. So, when did you make the determination
10 that this was a domestic violence case or an alleged
11 domestic violence case?

12 A. I never made that 100 percent determination.

13 Q. Okay. Now, in order to be bound or in order to
14 use these rules for action, wouldn't you have had to make
15 a determination that it was a domestic violence case?

16 A. I was there to investigative if it was a domestic
17 violence situation.

18 Q. That's not my question. In order to use this
19 General Order as a justification for your action,
20 wouldn't you have had to have determined first that this
21 was a domestic violence case?

22 A. No.

23 Q. Okay. What other types of cases are there?

24 A. There's larceny. There's numerous cases.

25 Q. Okay. So, wouldn't you have had to determine

1 before you -- well, let me ask you this. Are there
2 General Orders for larceny?

3 A. Yes, sir.

4 Q. And are there --

5 THE COURT: Excuse me. If we could focus on
6 this case, that would be very helpful to us.

7 MR. PLOFCHAN: I think -- I didn't mean to go
8 astray.

9 THE COURT: I don't think you hear what I'm
10 saying. I want you to focus on this case, what you pled
11 in your complaint.

12 MR. PLOFCHAN: Yes, sir.

13 BY MR. PLOFCHAN:

14 Q. Now, in terms of when you arrived -- let me ask
15 this. What was the first information you received with
16 regard to Mr. Mial?

17 A. I received a call for service.

18 Q. Okay. And who did that come from?

19 A. From our dispatch.

20 Q. Okay. What did you -- did you receive it in
21 written or oral format?

22 A. In oral format.

23 Q. Okay. And that came from the dispatcher?

24 A. Yes, sir.

25 Q. And, what did she say?

1 A. She had stated that there was an address that I
2 needed to respond to and that a complainant had called
3 and stated somebody was armed with a knife.

4 Q. Was that all that she said?

5 A. No, sir.

6 Q. What else did she say?

7 A. She had stated that the complainant while on the
8 phone, said, never mind, they dropped the knife. And
9 then the complainant hung up.

10 Q. Okay. So, the -- I want to be clear. The very
11 first communication you had was that there was a call
12 saying they needed -- I'm sorry, what was the actual
13 phrasing? Did so and so say they needed assistance with
14 a knife or there was someone with a knife?

15 A. Dispatch had stated there was a complainant that
16 had called stated they needed help getting a knife away
17 from somebody.

18 Q. Okay. And without hanging up in that same call,
19 they said never mind, they've given it up and then hung
20 up?

21 A. Yes, sir.

22 Q. Okay. So, if that's the case, would you agree
23 that based on that information, you have no existing
24 allegation that there is a crime or assault currently
25 being committed?

1 A. I would not agree with that, sir.

2 Q. If a complainant -- would you agree the
3 complainant is the victim?

4 A. I do not know that, sir.

5 Q. Well, what you were told -- because I want to
6 focus on what you knew. You were told that someone
7 called and said someone else has a knife and that they
8 wanted to get that away from them, correct?

9 A. Correct.

10 Q. Okay. What part of that information would suggest
11 to you that the person calling was not the victim?

12 A. I don't know who the person calling was until I
13 further investigate.

14 Q. Ma'am, I didn't ask who the person was. I want to
15 know based on that information that you had, what part of
16 that information suggests that the person calling is not
17 the victim?

18 A. I don't know who the complainant is and/or the
19 person calling.

20 Q. All --

21 THE COURT: Mr. Plofchan, we're going to take
22 the afternoon recess now for 15 minutes.

23 MR. PLOFCHAN: Yes, sir. Thank you.

24 (Court recessed at 3:01 p.m. and reconvened
25 at 3:18 p.m.).

1 THE COURT: You can bring our jury out,
2 Mr. Toliver. Thank you.

3 You may be seated. You may continue,
4 counsel.

5 MR. PLOFCHAN: May it please the Court.
6 BY MR. PLOFCHAN:

7 Q. Ma'am, just before we took the break, I asked --
8 one of the questions I asked, you said you were the one
9 who determined whether or not it's a domestic relations
10 call, correct?

11 A. I believe I stated not in every instance.

12 Q. Well, in this, were you the one who determined it
13 was a domestic relations call or domestic disturbance
14 call in this case?

15 A. I didn't classify it when it originally came out.

16 Q. Okay. When did you classify it?

17 A. When I wrote my report.

18 Q. So after everything was done?

19 A. Yes, sir.

20 Q. Okay. So, if you didn't classify it, how did you
21 know to apply the rules for domestic violence,
22 specifically General Order 534 when you went there?

23 A. I'm not understanding.

24 Q. Well, would you agree what it says is that -- rule
25 number 534 applies to domestic violence, correct?

1 A. Correct.

2 Q. And, you agree that you applied -- in your mind,
3 you answered and said that you applied the rules of
4 General Order 534 to this case, correct?

5 A. Correct.

6 Q. So, if this only applies to domestic violence
7 cases and you didn't classify it as a domestic violence
8 case until after you wrote your report, how did you know
9 to apply the rules of 534 when this case was actually
10 happening?

11 A. Our dispatch labeled it as a domestic violence
12 call.

13 Q. Okay. So, then it had been classified by someone
14 else?

15 A. Yes, sir.

16 Q. Okay. Can you explain why when I asked you who
17 classifies it as a domestic violence case, you told me
18 you do, if somebody else has already classified it as a
19 domestic case?

20 A. Because in the course of an investigation, things
21 can change. And just because dispatch classified it as
22 one thing I am able to classify it as something else.

23 Q. But it was classified when you were making -- when
24 you first went up to the house, correct?

25 A. Yes, sir.

1 Q. Would you agree that 534 actually talks about
2 three different types of people. It talks about
3 complainants, victims, and disputants, correct?

4 A. I would have to look it up. I believe they were
5 covered, yes, sir.

6 Q. Okay. And, would you agree that if we look at
7 534 -- do you see that, ma'am?

8 A. Yes, sir.

9 Q. If you look at page 4 where it talks about --
10 Section 4, it talks about procedures. One of the first
11 things that dispatch is supposed to say is who is
12 complaining and to locate the name of the caller if
13 different from the complainant. Correct?

14 A. That is what it says, yes, sir.

15 Q. Okay. Who were you identifying as -- who was
16 identified as the complainant to you?

17 A. Dispatch just stated a complainant.

18 Q. Okay. Didn't it also identify it as a male?

19 A. No, sir.

20 Q. Now, did you get cad reports with respect to
21 handwritten notes that were received over the radio or
22 received over a system into your cruiser?

23 A. Handwritten notes?

24 Q. Computer-generated records that were received in
25 your cruiser.

1 A. Yes, sir.

2 Q. Okay. And, did not that cruiser identify the
3 caller as -- or didn't those reports identify the caller
4 as a male?

5 A. I did not look at those reports.

6 Q. Okay. Did you ever look at those reports?

7 A. Yes, sir, I did.

8 Q. When did you first look at those reports?

9 A. After the call, sir.

10 Q. Okay. And, would you also agree that -- was an
11 ambulance ever sent to the -- prior to you going up to
12 the house, was an ambulance ever sent by dispatch?

13 A. That I do not know.

14 Q. Okay. Did you see one when you went there?

15 A. No, sir.

16 Q. Okay. And when you came down from the house after
17 the first time Mr. Mial closed the door, did you see any
18 ambulance?

19 A. No, sir.

20 Q. Okay. Now, would you agree that the General
21 Orders specifically say that if there's any evidence of
22 injury or a -- I'm sorry, it's right here in the
23 paragraph, where someone has threatened violence, a
24 dispatch -- a deputy shall be dispatched immediately
25 along with an ambulance, if needed, correct?

1 A. Correct, sir.

2 Q. And no ambulance was ever dispatched?

3 A. I do not know if it was dispatched.

4 Q. You certainly didn't see one or hear of one being
5 dispatched, correct?

6 A. Correct.

7 Q. Okay. Now, since you were familiar with the
8 General Orders, wouldn't that have indicated to you that
9 this was -- there was no evidence of injury or a weapon
10 existing?

11 A. That I did not know, sir.

12 Q. Well, I'm asking if you didn't see or hear of an
13 ambulance, with your training, wouldn't it have been
14 appropriate for you to conclude that there was no injury
15 or weapon existing?

16 A. No, sir.

17 Q. Do you assume that dispatch follows the General
18 Orders?

19 A. They're supposed to, sir.

20 Q. Okay. And can you rely on dispatch following the
21 General Orders?

22 A. Not in every instance, sir.

23 Q. How do you determine when to rely on dispatch and
24 not when to rely on dispatch?

25 A. That's why I am sent to the residence.

1 Q. When do you make your determination whether to
2 rely on dispatch or not rely on dispatch?

3 A. I'm not understanding. I'm sorry, I apologize.

4 Q. Well, you just said that you don't rely on
5 dispatch in every instance. And I want to know how do
6 you make a determination as to when to rely on dispatch
7 or not rely on dispatch?

8 MR. FRANCUZENKO: Your Honor, I'm going to
9 object at this point on relevance. We're talking about
10 whether dispatch followed an order or not. I object.

11 MR. PLOFCHAN: May I respond, Your Honor?

12 THE COURT: I'm listening.

13 MR. PLOFCHAN: We're actually talking about
14 what information the officer had and what was -- what
15 were the inferences she should draw from that information
16 based on the General Order.

17 THE COURT: All right. If you have a
18 question about what her knowledge was on the day and
19 relevant to this case, that would be fine.

20 MR. PLOFCHAN: That's what I'm referring to.

21 THE COURT: Her general knowledge --
22 objection sustained.

23 BY MR. PLOFCHAN:

24 Q. So that day when you were there and didn't see an
25 ambulance and didn't hear an ambulance or hear of an

1 ambulance over the radio, wouldn't you be able to have
2 inferred that the dispatch determined that there was no
3 evidence of injury or weapon existing?

4 MR. FRANCUZENKO: Your Honor, I object, calls
5 for speculation.

6 THE COURT: Sustain.

7 BY MR. PLOFCHAN:

8 Q. Now, you indicated as well -- how did dispatch
9 communicate to you that this was a domestic violence
10 case?

11 A. They stated over the radio.

12 Q. Did they say it or did they actually put it in the
13 notes that were typed into the computer?

14 A. When the original screen pops up, it states it on
15 the top along with the address.

16 Q. Okay. I thought you just said that you hadn't
17 looked at the screen to determine whether or not dispatch
18 had classified this as anything --

19 A. I did not.

20 Q. -- until after the incident was over?

21 A. I did not look at the notes of the call, sir.

22 Q. Okay. Now, would you agree that when you got
23 there -- I'm going to back up.

24 I apologize, Your Honor.

25 Now, before you got to Mr. Mial's house, would you

1 agree that you were also informed by dispatch that there
2 was a second call, that dispatch had called back?

3 A. Yes, sir.

4 Q. Okay. And, dispatch had called back and had a
5 conversation with Mr. Mial and they confirmed that the
6 person he was complaining about no longer had a knife and
7 that he told them the situation was under control, no
8 need to send anyone out.

9 A. Yes, sir.

10 Q. Okay. So, before you got to the house, you knew
11 that there was a call that, before that call even ended,
12 he said he didn't need anybody and that they had called
13 back and confirmed they didn't need anybody, correct?

14 A. Correct.

15 Q. And when you got to the house, you didn't leave
16 your channel open, did you? You didn't leave your
17 communication channel open, did you?

18 A. Any time my radio is on, the channel is open, sir.

19 Q. Isn't there a procedure that if you believe that
20 it's -- there's a dangerous situation, you leave it open
21 in a dedicated way so dispatch can always reach you?

22 A. Yes, sir.

23 Q. And isn't it a fact you did not leave it in a
24 dedicated way when you first approached the house?

25 A. Yes, sir.

1 Q. Okay. So, is it fair to say that when you
2 approached the house, you did not deem this to be a
3 dangerous situation?

4 A. I can't say that for sure, sir.

5 Q. Well, if it was dangerous and the rules require
6 you to leave the channel open for dangerous situations
7 and you didn't leave the channel open, why can't we
8 conclude that you didn't think it was a dangerous
9 situation.

10 A. Because I had not made contact yet with anyone at
11 the residence.

12 Q. So, if you didn't know if it was dangerous or not,
13 why wouldn't you have left the channel open that day?

14 A. I decided not to.

15 Q. But we -- you decided not to and you are saying
16 that we can't infer that that decision was not -- that
17 decision reflects your decision it was not a dangerous
18 situation?

19 A. I'm sorry. There was too many different --

20 Q. Okay. I'll move on.

21 Now, I asked you about complainants, victims and
22 disputants. In accordance with the General Orders, what
23 is the difference between a complainant, a victim and a
24 disputant as it apply to this situation that day?

25 A. The complainant was identified as somebody that

1 had called.

2 Q. Okay. And what is a victim?

3 A. A victim is some -- a victim of a crime.

4 Q. Okay. And what is a disputant?

5 A. Could be a party to that crime.

6 Q. Now, you were told that that second call, that the
7 person who had called was a male, correct?

8 A. No, sir.

9 Q. Okay. And, when you got to the door, you knocked
10 on the door, correct?

11 A. Yes.

12 Q. And, Mr. Mial came and arrived in about 10,
13 15 seconds, correct?

14 A. Yes, sir.

15 Q. And, when he arrived, he opened the door
16 completely, correct?

17 A. Correct.

18 Q. All right. And he was wearing socks and a
19 T-shirt, correct?

20 A. Correct.

21 Q. Okay. And, you did not see any wounds or marks or
22 anything on Mr. Mial, correct?

23 A. Correct.

24 Q. You did not see any broken furniture?

25 A. Correct.

1 Q. You didn't hear anybody crying or yelling or
2 whaling?

3 A. Correct.

4 Q. You actually -- when you came up, you had looked
5 in the window and saw some children, correct?

6 A. Incorrect.

7 Q. You didn't see children?

8 A. No, sir.

9 Q. Okay. Did you ever see children?

10 A. Yes.

11 Q. When did you see children?

12 A. After I had already made contact with Mr. Mial.

13 Q. Okay. So, Mr. Mial opens the door and then you
14 see children?

15 A. Eventually, yes, sir.

16 Q. And they were not crying or appeared distressed in
17 any way, shape or form, correct?

18 A. Correct.

19 Q. So they were actually very peaceful and seemed not
20 unhappy?

21 A. Correct.

22 Q. So, there was nothing to indicate to you that
23 there was any type of emergency or disturbance going on,
24 correct?

25 A. Incorrect.

1 Q. What was it that indicated to you that there was
2 an emergency or disturbance going on?

3 A. A call had been placed to that residence stating
4 that somebody had been armed with a knife.

5 Q. Somebody had what?

6 A. Been armed with a knife.

7 Q. Now, you said a call had been placed to that
8 residence. What about -- what about some call that was
9 placed to that residence that would indicate that someone
10 in the residence had a knife?

11 A. That's what I was there to investigate.

12 Q. So, someone from some other place called the
13 residents and said there's a knife and you went to the
14 residence to see if there's a knife?

15 A. That was the address that I was dispatched to.

16 Q. So, it was your understanding that no one at the
17 residence indicated there was a knife?

18 A. It state in the complainant -- stated somebody was
19 armed with a knife. It never said in the residence.
20 That was not communicated to us.

21 Q. So, when you got to the door, you didn't even know
22 if the person that this caller was talking about was even
23 in the house when the call was made?

24 A. Correct.

25 Q. And, you had no -- other than he identified an

1 address of where the caller lived, you had no indication
2 that there was anyone at all in the house with a knife,
3 correct?

4 A. Correct.

5 Q. So, I want to be clear, when Mr. Mial came to the
6 door, you did not know if there was anyone in the house
7 with a knife or if there had ever been anyone in the
8 house with the knife?

9 A. He just stated somebody had been armed and did not
10 say where.

11 Q. Okay. So you didn't know it was in the house,
12 correct?

13 A. Correct.

14 Q. And, now, you just told me you didn't know if it
15 was a male, but you now just told me that he said that
16 someone had been armed, but he didn't say where.

17 If you didn't know it was a male, why would you
18 use the pronoun "he" said that when you're talking about
19 the caller?

20 A. I apologize, you had used it. It was just the
21 complainant.

22 Q. So, you don't know -- so, this could have been
23 someone armed with a knife two houses down, correct?

24 A. Correct.

25 Q. And, someone -- if someone was armed with a knife

1 on the street, you didn't know?

2 A. Correct.

3 Q. And, you had no reason to believe that there was
4 anyone in the house who had been armed, correct?

5 A. That I did not know.

6 Q. Well, did you have any reason to believe it?

7 A. No, sir.

8 Q. And, you didn't see any signs when you opened --
9 when Mr. Mial opened the door and you eventually saw the
10 children, you didn't see any signs from -- from your
11 ability to observe that gave you any indication that
12 someone had ever been in the house with a knife?

13 A. That's correct.

14 Q. Okay. So then if you didn't have any -- well, did
15 you ask Mr. Mial to come into the house?

16 A. No, sir.

17 Q. Okay. So, you didn't ask to go into the house at
18 that point in time?

19 A. No, sir.

20 Q. Did you ask him to bring anyone to the door?

21 A. Yes, sir.

22 Q. Who did you want him to bring to the door?

23 A. Anyone that was at that residence.

24 Q. Okay. Now, if you have no reason to believe
25 anyone was ever in the house with a knife, why would you

1 want everyone to come -- who was in that house to come to
2 the door?

3 A. The gentleman that answered the door had stated he
4 had made the phone call.

5 Q. Okay. So -- but he didn't say that the -- you
6 didn't ask him if that person was in the house, did you?

7 A. I asked who had the knife.

8 Q. And what did he say?

9 A. It was none of my business.

10 Q. Okay. And he never said that that person was in
11 the house, correct?

12 A. Correct.

13 Q. So, you still have no reason to believe that
14 anyone in the house had a knife?

15 A. Correct.

16 Q. So, if you had no reason to believe anyone in the
17 house had a knife, why did you ask everyone to come to
18 the door?

19 A. Because he had stated he had called, and he would
20 not tell me who had the knife.

21 Q. Okay. He also said that never mind, they got rid
22 of it, correct?

23 A. Correct.

24 Q. And he also said that the situation is resolved,
25 and you don't need to come, correct?

1 A. Correct.

2 Q. Okay. So, I'm trying to figure out if you knew
3 all that and you had no reason to believe that anybody in
4 the house had a knife, why did you care who was in the
5 house?

6 A. I was there to investigate that, sir.

7 Q. And, if someone doesn't cooperate or doesn't want
8 to give you information, what's your response to that?

9 A. You're not legally required to.

10 Q. So they don't have to cooperate or give you
11 information?

12 A. They do not.

13 Q. Okay. As a matter of fact they're within their
14 constitutional rights not to cooperate or give you
15 information?

16 A. Right.

17 Q. And they're within their rights to say I already
18 told you it's not a problem; I don't need you any more?

19 A. Correct.

20 Q. Okay. So, I want to be clear. At that first time
21 you did not ask to enter the house?

22 A. No, sir.

23 Q. Okay. So, there was no refusal of entry to the
24 house?

25 A. Correct.

1 Q. So, there would have been no reason for a forced
2 entrance into the house at that point in time?

3 A. I was trying to determine the facts.

4 Q. Okay.

5 A. So, I can't say that.

6 Q. Do you see this section in front of you from
7 General Order 534?

8 A. Yes, sir.

9 Q. Okay. If entry is refused, deputies must explain
10 that they need to make sure there are no injured persons
11 inside. Correct?

12 A. Correct.

13 Q. Entry wasn't refused at this point in time because
14 you didn't ask for entry, correct?

15 A. Correct.

16 Q. Okay. Refusal of entry or no response to a knock
17 at the door may require a forced entry, only if certain
18 requirements are met, correct?

19 A. Correct.

20 Q. Now, I just asked you if there was -- you had no
21 reason to have a forced entry and you said you didn't
22 know, correct?

23 A. Correct.

24 Q. Well, would you agree that under your General
25 Orders, you can only have a forced entry if there is a

1 refusal of entry or no response to a knock at the door?

2 Those are the first prerequisites, correct?

3 A. There are other requirements as well.

4 Q. These are the first prerequisites, correct?

5 A. Those, yes.

6 Q. And you didn't have a refusal because you never
7 asked to enter, correct?

8 A. Correct.

9 Q. And, he did respond to a knock on the door,
10 correct?

11 A. Correct.

12 Q. So, based on this paragraph, would you agree that
13 you had no authority to seek a forced entry of the -- at
14 that point in time?

15 A. I was there trying to gather information.

16 Q. I didn't ask that, ma'am.

17 Would you agree that you had no authority under
18 your General Orders to seek a forced entry at this point
19 in time?

20 A. I don't fully agree with that.

21 Q. Okay. Can you point anywhere in the General
22 Orders that said at that point in time you would have had
23 authority to make a forced entry?

24 A. There are other circumstances. On those two, no.

25 Q. You know what those other circumstances are?

1 A. Degree of urgency, the possibility of danger to
2 others, the bottom four underneath that, sir.

3 Q. So, let's go down to the bottom of the list. Now,
4 would you agree that you didn't have authority to conduct
5 a search of the house at that point in time?

6 A. To search it, no.

7 Q. You did not have authority, correct?

8 A. I do have -- I'm still trying to investigate where
9 that is.

10 Q. Well, if you look at this order, it says,
11 "deputies may conduct a search of the premises if consent
12 has been given and no one who resides at the premises and
13 is present at the scene objects to the search".

14 You didn't ask for a consent, correct?

15 A. Correct.

16 Q. You didn't obtain consent, correct?

17 A. Correct.

18 Q. Mr. Mial didn't volunteer consent, correct?

19 A. Correct.

20 Q. So then at that point in time, you had no
21 authority to search, regardless of your intent to gather
22 information, correct?

23 A. Correct.

24 Q. Okay. Now let's go to Section E. Section E,
25 would you agree, also says "deputies may also make a

1 warrantless entry to conduct a search if an emergency
2 exists", correct?

3 A. Correct.

4 Q. "The deputies must have a reasonable belief that
5 such an emergency does exist; i.e., deputies believe that
6 someone, perhaps children, are in distress or immediate
7 danger and in need of assistance", correct?

8 A. Correct.

9 Q. Now, let's go through this. Are you asserting
10 that at that point in time you have authority to make a
11 warrantless entry into that house to conduct a search
12 because an emergency exist?

13 A. I was investigating that to try to determine it.

14 Q. So was that a no? You were not asserting that you
15 had the authority to go into the house because you didn't
16 have information to establish that an emergency existed,
17 correct?

18 A. Correct.

19 Q. And, there is nothing in the General Orders that
20 says that you have authority to make a warrantless entry
21 into a house to investigate, does it?

22 A. Correct.

23 Q. Okay. So you would have had to have some
24 articulated observable fact that you could rely on,
25 correct?

1 A. Correct.

2 Q. Okay. Now, it also says that "deputies must have
3 a reason to believe that such emergency exists. Deputies
4 believe that someone, perhaps children, are in distress".

5 The only people you saw in that house were
6 Mr. Mial and his children, correct?

7 A. Correct.

8 Q. And they were not in distress, correct?

9 A. They did not appear in distress.

10 Q. You had no reason to believe they were in
11 distress, did you?

12 A. That was the address provided by the complainant
13 of where somebody was armed with a knife.

14 Q. Well, actually they weren't armed with a knife,
15 were they? They had been armed with a knife, correct?

16 A. Correct. They had been.

17 Q. Okay. So, would you agree that there was not an
18 immediate danger based on your knowledge because no --
19 based on your knowledge nobody had a knife?

20 A. That I did not know for sure, sir.

21 Q. I'm asking based on what you did know. You knew
22 that no one had a knife because the last thing you were
23 told was they've given it up. I don't need your help,
24 correct?

25 A. They had been -- dispatch had been told that. I

1 was there to verify it.

2 Q. But, what you knew was that somebody had given up
3 the knife, correct?

4 A. Dispatch had been told that, yes, sir.

5 Q. Now, so at that point in time, where is -- is
6 there anybody else there at the door with you?

7 A. I can't say what moment another deputy walked up.

8 Q. Or at any point in time while you're talking with
9 Mr. Mial and the door is wide open and he's standing
10 there in his socks, and you can see his kids in the back,
11 was there any other deputy with you?

12 A. Yes, sir.

13 Q. Who?

14 A. Deputy Ferguson.

15 Q. Okay. And you don't know when he got there?

16 A. Correct.

17 Q. Okay. Did he say anything to Mr. Mial?

18 A. No, sir.

19 Q. Did you say anything to him while Mr. Mial was
20 present?

21 A. Deputy Ferguson?

22 Q. Uh-huh.

23 A. No, sir.

24 Q. Okay. And then Mr. Mial told you that he didn't
25 need you anymore and that he was telling you that he

1 thought it was crazy that you were there so quickly when
2 he's called in the past and no one ever showed up.

3 Correct?

4 A. Correct.

5 Q. And then he eventually closed the door, correct?

6 A. Correct.

7 Q. Okay. And in the past you've testified under oath
8 that he slammed the door, correct?

9 A. Correct.

10 Q. But you don't know if he slammed the door or not,
11 correct?

12 A. He slammed the door, yes, sir.

13 Q. Okay. Do you know if other people had testified
14 that he didn't slam the door or they had no memory of
15 slamming the door?

16 MR. FRANCUZENKO: Objection, Your Honor.
17 She's asked about what she recall --

18 MR. PLOFCHAN: I'll withdraw the question,
19 Your Honor. I'll withdraw the question.

20 THE COURT: All right.

21 BY MR. PLOFCHAN:

22 Q. Have you ever had -- you actually have a protocol,
23 don't you, that if someone doesn't want to talk or
24 doesn't invite you in, you have a protocol under your
25 orders on what to do, correct?

1 A. Correct.

2 Q. And what does that involve?

3 A. I would have to look at the exact order.

4 Q. So, you don't know what's involved at this point
5 in time without looking at it?

6 A. Someone does not invite us in, we have to try to
7 verify the information that was already provided by
8 dispatch through an investigation and confirm what had
9 been told to us or to dispatch.

10 Q. Okay. Well, was that requirement triggered at
11 this point in time?

12 A. Yes.

13 Q. Well, you just told me that if someone doesn't
14 invite you in that that would trigger an investigation.
15 You never asked to go in, correct?

16 A. Correct.

17 Q. So why would that trigger a further investigation?

18 A. Because I need to verify information.

19 Q. You didn't tell anybody that you needed to come
20 in, right?

21 A. Right.

22 Q. So if you didn't tell anyone you needed to come
23 in, they couldn't have denied you the ability to come in,
24 correct?

25 A. Correct.

1 Q. So -- and if nobody denied you the ability to come
2 in, then you don't have any other reason to do any
3 further investigation because you didn't do what you were
4 supposed to do at the door, right?

5 A. Incorrect.

6 Q. So, let me get this. Is it your position that
7 someone is supposed to voluntarily invite you in without
8 you asking?

9 A. No, sir.

10 Q. And, you agreed that someone not letting you in
11 upon your request is what triggers the need to
12 investigate with neighbors, correct?

13 A. Lack of service is what leads me to have to
14 investigate further.

15 Q. I didn't ask you what lead you to investigate
16 further, because apparently this visit to the door is
17 investigating further.

18 You're at the door and someone doesn't let you in
19 upon your request. That's what triggers your requirement
20 to go to neighbors, right?

21 A. The requirement to go to the neighbors, I'm sorry.

22 Q. Or to make further investigation.

23 A. Further investigation is when I got there, I have
24 to investigate further. I --

25 Q. Ma'am, I asked you what happens if somebody

1 doesn't invite you in, and you said that requires us to
2 do a further investigation, perhaps go to neighbors,
3 correct?

4 A. Correct.

5 Q. If you didn't ask -- and then you said it doesn't
6 happen when -- let me rephrase it.

7 You said they do not have to spontaneously ask you
8 in. You have to ask, correct?

9 A. If he wanted to invite me in, he could have. I
10 don't have to ask.

11 Q. Does the -- where -- do you know where in the
12 General Orders it says that you are -- that someone -- if
13 someone does not unilaterally invite you in, you're
14 supposed to go to the neighbors?

15 A. No.

16 Q. Doesn't it, as a matter of fact -- we're back
17 again on page five and I'll put a highlight in there.
18 "If entry is refused and refusal of entry may require
19 certain further action". Correct?

20 A. I'm trying to see where you're pointing out, sir.

21 Q. I'm pointing right here, "if entry is refused" and
22 then right here, "refusal of entry", correct?

23 A. I see that, yes, sir.

24 Q. So, in order to trigger any further response on
25 your part, you have to seek entry and be refused,

1 correct?

2 A. For that part of the General Orders.

3 Q. And, you did not seek entry or were refused,
4 correct?

5 A. Right.

6 Q. And then, for search if an emergency exists, it
7 says you have to have a reasonable belief that such
8 emergency does exist, that someone, perhaps children, are
9 in distress or immediate danger and in need of
10 assistance, correct?

11 A. Right.

12 Q. Where does it tell you that you're supposed to go
13 to the neighbors?

14 A. It doesn't state right in there.

15 Q. Okay. Now -- so, you're -- I want to be clear.
16 You're saying there are two different factual scenarios,
17 one case where I asked to come in and I'm refused, and
18 another case where I think an emergency exists, correct?

19 A. I'm not understanding what the question would be,
20 sir. I apologize.

21 Q. Under the rules, the General Orders, you have two
22 instances where you can have a warrantless entry. One
23 upon refusal to your request to enter plus some other
24 factors. The other is if you believe an emergency exists
25 and there are other factors, correct?

1 A. Yes, sir.

2 Q. Okay. And we've already established that at that
3 time after your first visit, there was no refusal,
4 correct?

5 A. Correct.

6 Q. All right. So -- and you said you still believed
7 that you had the right to make a forced entry into
8 Mr. Mial's house at that time, correct?

9 A. I was gathering facts to see if that existed.

10 Q. Yes or no, did you have a right at that point in
11 time to enter his house with a forced entry?

12 A. I'm going to say no.

13 Q. And that's because you didn't know if there was an
14 emergency, correct?

15 A. Correct.

16 Q. So then you and Ferguson leave and the door is
17 closed, correct?

18 A. Correct.

19 Q. And, you walk down to the driveway and down to the
20 street, correct?

21 A. Correct.

22 Q. Now, what time did you get there?

23 A. I couldn't be positive, sir.

24 Q. Okay. Would you agree it was approximately 10
25 after 5.

1 A. It could be.

2 Q. Okay. And, would you agree that this whole
3 encounter with Mr. Mial took less than 3 minutes?

4 A. Yes, sir.

5 Q. Okay. So we're talking somewhere between 10 after
6 5 or 5:15, that you are now down the driveway walking at
7 that point in time, correct?

8 A. Yes, sir.

9 Q. And did Ferguson make a comment to you that he was
10 surprised, never seen you -- never -- used so few words
11 or not say anything like that?

12 A. Yes, sir.

13 Q. Okay. And, what was in your thought process at
14 that point in time?

15 A. The reason I didn't say anything was I did not
16 want to agitate Mr. Mial any more than he already was.

17 Q. Okay. But, I'm not asking -- I said what is your
18 thought process. You just admitted you didn't have any
19 evidence of an emergency. And you didn't ask to enter
20 the house in that case.

21 So, at this point, you have no thought of forceful
22 entry?

23 A. At this point, our thought was to contact -- or my
24 thought was to contact the supervisor and explain what we
25 had.

1 Q. Okay. Now, you were familiar with the General
2 Orders, correct?

3 A. Correct.

4 Q. So, did you contact the supervisor?

5 A. No, sir.

6 Q. And is that Sergeant Holloway?

7 A. Yes, sir.

8 Q. Okay. Who contacted the supervisor?

9 A. Deputy Ferguson.

10 Q. And were you there when he was on the phone with
11 her?

12 A. Yes, sir.

13 Q. And did you hear his conversation?

14 A. Yes, sir.

15 Q. Okay. Do you know what was related to her?

16 A. I do not, sir.

17 Q. Okay. And what did Deputy Ferguson tell you when
18 he got off the phone with Sergeant Holloway?

19 A. Stay put; she would be there shortly.

20 Q. And that's it?

21 A. Yes, sir.

22 Q. So this is about 5:13, 5:15. How long did it take
23 for her to get there?

24 A. I couldn't tell you exact minutes, but it wasn't
25 long.

1 Q. Okay. Did you take any other steps?

2 A. No, sir.

3 Q. You didn't try to write up anything to seek a
4 search warrant or anything with regard to the house?

5 A. No, sir.

6 Q. You didn't go back up to the house and look in any
7 windows?

8 A. No, sir.

9 Q. Were there any other deputies present at that
10 time?

11 A. No, sir.

12 Q. So, it's just you and Ferguson at the bottom of
13 the driveway to the house waiting for Holloway?

14 A. Right.

15 Q. And then she shows up, correct?

16 A. Correct.

17 Q. And what does she tell you about going into the
18 house?

19 A. She had stated to make contact again with the
20 homeowner and this time to check the welfare of all the
21 residents in the residence.

22 Q. What did she tell you about whether or not you
23 should let the door close?

24 A. She stated not to let it close.

25 Q. And, did she tell you you shouldn't have let it

1 close on the first encounter?

2 A. I can't remember the exact words.

3 Q. Okay. Did you ever tell her or make any question
4 to her about the General Orders and say we can't go the
5 house unless there's an emergency?

6 A. No, sir.

7 Q. Did you ever tell her that we can't go in the
8 house unless we're refused entry and the four factors
9 exist?

10 A. No, sir.

11 Q. So, she -- but you knew that those were the rules,
12 right?

13 A. I knew the General Orders existed, yes, sir.

14 Q. And you knew you were bound by the General Orders?

15 A. Yes, sir.

16 Q. Okay. So when she told you that you needed to go
17 back up and make entry into the house, and you knew that
18 you didn't have a reason or a justification to make entry
19 into the house, what did you tell her?

20 A. We walked back up to the house. I didn't speak
21 with her again.

22 Q. So you just blindly said, even though you knew
23 that the rules and the General Orders didn't permit you
24 to go back into the house with the information you had,
25 you said you -- you went back up to that house in an

1 effort to gain a forceful entry, correct?

2 A. An effort to make contact.

3 Q. And, if he opened the door, you were to enter the
4 house, correct?

5 A. Not let the door shut.

6 Q. How were you going to accomplish that without
7 entering the house?

8 A. That would be as the situation unfolded.

9 Q. No, I'm just physically -- how are you going to
10 accomplish not letting the door shut without entering the
11 house?

12 A. Some part of the body would have to enter the
13 house.

14 Q. Okay. So when I asked you were going up there to
15 make contact and enter the house, that's what you were
16 intending to do, right?

17 A. Yes, sir.

18 Q. Even though you knew you did not have authority to
19 do that at that time, correct?

20 A. Per the General Orders, yes, sir.

21 Q. Okay. Now, you're also familiar with the
22 Constitution, correct?

23 A. Yes, sir.

24 Q. Okay. And you agree that the Constitution and the
25 Fourth Amendment forbids entry into a house without a

1 warrant, correct?

2 A. Correct.

3 Q. And, you didn't have a warrant?

4 A. Correct.

5 Q. Didn't have an arrest warrant or a search warrant,
6 correct?

7 A. Correct.

8 Q. And you hadn't applied for either?

9 A. Correct.

10 Q. So, the only reason that you would have been able
11 to get into this house is if you had an exception to the
12 warrant requirement, correct?

13 A. Correct.

14 Q. And yet, you knew at the time that you were going
15 up to that house to enter that house that you did not
16 have the criteria to meet an exception to enter the
17 house, correct?

18 A. We were developing it, correct.

19 Q. But you had already formed the opinion that you
20 were entering the house, correct? That's what Holloway
21 told you to do, and that's what you were doing, correct?

22 A. Correct.

23 Q. Okay. So, you were intending to enter the house
24 regardless of whether or not there was legal
25 justification, correct?

1 MR. FRANCUZENKO: No objection, Your Honor.

2 THE WITNESS: We were trying to investigate
3 further.

4 BY MR. PLOFCHAN:

5 Q. Ma'am, I didn't ask that. When you left -- you
6 said yes, ma'am, or yes, sergeant to Deputy Holloway and
7 you turn to go back up to the house. It was your intent
8 to enter into the house whether or not there was legal
9 justification, yes or no?

10 A. She stated not to let the door shut. That was our
11 intent.

12 Q. And the only way to do that was to enter the
13 house, some part of the body entering the house and you
14 were going to do that without legal justification,
15 correct? Correct, yes?

16 A. I don't agree with that, sir.

17 Q. Well, when you told me that -- how were you going
18 to -- let me rephrase.

19 Court's indulgence, Your Honor.

20 If you were determined to go up, make contact and
21 not let the door closed, which required some part of
22 somebody's body entering the house and you knew at that
23 time that you did not have a refusal and that at that
24 time, you not have an emergency, what legal justification
25 did you have to attempt to enter the house?

1 A. We were trying to ascertain that information.

2 Q. Where in the General Order does it say that you
3 can make a warrantless forced entry into a house to
4 obtain information?

5 A. It does not.

6 Q. Where in any order, statute, law, case, any -- any
7 authority that you can put your hand on, does it say that
8 you have the authority to enter a home without a warrant
9 and make a forceful entry in order to investigate whether
10 there's an emergency?

11 A. It does not.

12 Q. So, since you went there, you cannot provide this
13 jury with any legal basis for your intent to enter that
14 house to further an investigation, correct?

15 A. It was based on first encounter and the steps that
16 were taken in between the first and second encounter.

17 Q. Well, now, let's talk about that answer. You've
18 just told us that when you left the first encounter and
19 walked down to the bottom of the driveway, you did not
20 have any evidence of an emergency that would have allowed
21 you to enter the house, correct?

22 A. I stated I didn't feel we had enough.

23 Q. So then you didn't have it to enter the house,
24 correct?

25 A. Correct.

1 Q. Okay. And so what, based on the first encounter,
2 allows you on your way back up to say now I can enter the
3 house? If you didn't have it when you were leaving the
4 house; you didn't talk to Mr. Mial in the meantime, and
5 now you're going back up to the house, what happened
6 there that now all of a sudden gives you a legal
7 justification to enter the house based on the first
8 encounter?

9 A. There were steps taken in between that time.

10 Q. What steps?

11 A. Phone calls made to the residence, knocking on the
12 residence door.

13 Q. I'm asking about the final leave to the house. No
14 phone calls were made until you were actually at the
15 door, right?

16 A. I believe so, yes.

17 Q. Okay. So, no phone calls were taken in the -- in
18 between the time when you had already formed the idea
19 that you were entering the house. And you had said --
20 and what was the second one after phone calls?

21 A. Phone calls and knocking on the doors.

22 Q. And knocking on the door hadn't happened before
23 you went back up. Somebody else hadn't gone up to knock
24 on the door, right?

25 A. Right.

1 Q. So there was nothing intervening that would have
2 justified you when you left, see a sarge, when you turned
3 around, there was nothing to justify to have an intent to
4 enter that house at that point, correct?

5 A. She had stated not to let the door shut. But we
6 had not entered the house at that time. We were still
7 developing our investigation.

8 Q. If the sergeant gives you an illegal order, do you
9 follow it?

10 A. No, sir.

11 Q. So, whether she said to enter it or not is
12 irrelevant, isn't it? You knew you didn't have any legal
13 basis when you turned up the driveway to go into that
14 house, correct?

15 A. We were trying to make contact.

16 Q. I understand what you're trying to do. But, you
17 already said you had the intent to enter and you knew you
18 did not have a legal basis to enter, correct?

19 A. That's what she instructed us to do.

20 Q. And you just told me because you knew you did not
21 have a legal basis you're actually obligated to ignore an
22 illegal order, right?

23 A. I didn't feel it was an illegal order.

24 Q. So what make it legal?

25 A. The notes of the call, the encounter with Mr. Mial

1 the first time, all of that was circumstance that played
2 into it.

3 Q. So, if -- but none of those changed from the time
4 you left the house until after you talked to the sergeant
5 and you went back up, correct? You didn't have any more
6 information from the house, right?

7 A. Right.

8 Q. So, if you didn't have legal basis when you left
9 the house the first time, and you got no more
10 information, how did you now form the opinion that it was
11 legal for you to go in and investigation?

12 A. Sergeant Holloway had formed that opinion and had
13 stated it based on -- you would have to ask her what her
14 opinion was based on.

15 Q. Well, I'm not asking about Sergeant Holloway's
16 actions. She's not a defendant. You just told me you
17 can't obey an illegal order. And you told me you're
18 familiar with the General Orders, statutes, law,
19 Constitution.

20 Regardless of Sergeant Holloway, what authority
21 are you relying on that says that when you turned around
22 and you had the intent to enter that house regardless,
23 that you were justified in doing so?

24 A. Based on the phone call and the totality of what
25 went on.

1 Q. So what changed and this is the last time I'm
2 going to ask because we're going in circles. What
3 changed between the time you came -- you left the house
4 to the time you turned around that those phone calls and
5 the circumstances all of a sudden now gave you a
6 justification to enter a house to investigate?

7 A. The time lapse, the knocking on the door, the
8 phone calls, all that played into it.

9 Q. Ma'am, there was no knocking on the door. There
10 was no phone call because you hadn't gotten to the door
11 yet. You created the time lapse, correct?

12 A. Correct.

13 Q. So, I want to be clear then. Since you hadn't
14 gotten to the door yet to knock and nobody -- and nobody
15 had made a phone call, you're saying, I've created a time
16 lapse and now this justifies me to make a forceful entry
17 into a house and investigate even though I don't have any
18 evidence of an emergency?

19 A. That is not what I'm saying, sir.

20 Q. Tell me what you are saying then, because I
21 thought I just did exactly -- I identified everything you
22 said.

23 A. I'm saying based on the first encounter with Mr.
24 Mial, that did create some sort of urgency to myself. I
25 did not feel it was enough at that point to enter the

1 home because I wanted him to calm down, to not create
2 further issues.

3 The second time, we were told after we had walked
4 away from the residence, you should have not let the door
5 shut. This time don't let it shut. We are required to
6 check the welfare of all the residents in that house.

7 Q. Now, with all due respect -- I'm not going to
8 comment on your testimony. I'll save it for argument.

9 Nothing -- you had no additional information other
10 than Sergeant Holloway telling you to go into the house
11 and you knew that that was an illegal order, correct?

12 A. I didn't think it was an illegal order, sir.

13 Q. And then I asked you to tell me what statute,
14 rule, order or anything you relied on that would make it
15 a legal order and you can't do that, can you?

16 A. Based on the initial phone call and the behavior
17 at the door.

18 Q. Well, if there was an initial phone call and
19 behavior at the door, that behavior would have had to
20 create a sense of emergency in order for you to make a
21 forceless entry, correct?

22 A. Correct.

23 Q. And you already admitted it didn't create a sense
24 of emergency, correct?

25 A. I stated I did not want to make the situation any

1 worse than it already was.

2 Q. You also stated there was no emergency, did you
3 not, within the last half hour?

4 A. The phone call itself is a lead that there is an
5 emergency.

6 Q. Well, what about the phone call that says, "never
7 mind. They've given up the knife". And then you call
8 back. "The situation's under control. Don't come out."

9 Doesn't that give you a lot of evidence that
10 there's not an emergency?

11 A. No, sir.

12 Q. So, I want to be clear. You as an officer are
13 free to disregard any citizen's statement that there is
14 not an emergency just because you don't want to listen to
15 it?

16 A. I have to investigate it, sir.

17 Q. Where in the General Orders does it says that you
18 have to investigate it?

19 A. It does state.

20 Q. Does it? And where does it say --

21 A. You're required to investigative any calls for
22 service.

23 Q. Where do they define investigation?

24 A. Gather information, gather facts.

25 Q. Okay. And where does it say in your General

1 Orders that an investigation requires you to enter a
2 house?

3 A. It does not say to enter a house, sir.

4 Q. Okay. So now we're back in this big circle. I'm
5 trying to distinguish -- you're investigating. I have no
6 issue with your investigating, but you entered somebody's
7 house.

8 So, where was the authority when you turned
9 around, yes, sergeant, when you turned around for you to
10 form the intent that you were entering that house to
11 investigate? Where's the authority to do that? There
12 isn't any, is there?

13 A. Based on the original phone call to check the
14 welfare of all the residents in the house.

15 Q. If it didn't create an emergency then, what
16 changed that allowed it to create an emergency
17 afterwards?

18 A. First time I tried not to make the situation any
19 worse. The emergency was still there.

20 Q. Well, so you walked away from an emergency. Is
21 that what your testimony is?

22 A. Not make the situation worse, yes.

23 Q. So you walked away from the emergency. What -- I
24 want to be clear.

25 As an officer, you're supposed to apply reason,

1 logic and common sense, correct?

2 A. Correct.

3 Q. And, you have a phone call that says, I need some
4 help getting a knife away from someone. Never mind,
5 they've given it up.

6 Five minutes later, they -- dispatch calls back
7 and they say, yeah, problem solved, everything's done.
8 You show up, nothing -- somebody comes to the door right
9 away. His socks, T-shirt. You look around. You see
10 kids in the back. There is no evidence of violence.
11 Reason, logic and common sense dictate that there's no
12 emergency, doesn't it?

13 A. Not necessarily, sir.

14 Q. Especially since you didn't know if the person had
15 a knife in the house or outside of the house. Doesn't
16 that dictate that there's no emergency?

17 A. That was the residence that was given as to where
18 the knife was. I have to verify that's where it was
19 occurring.

20 Q. Now, this is -- and now, Deputy, it seems your
21 story is changing.

22 Does -- where in the report that you got said that
23 that's the residence where the knife was?

24 A. That was the residence that was provided by
25 dispatch.

1 Q. So, that was the residence of the caller, correct?

2 A. Of the complainant.

3 Q. Right. And you testified not more than 40 minutes
4 ago, half hour, that you didn't know if the knife was
5 outside, across the street, or in the neighbor's yard,
6 correct?

7 A. I did, yes.

8 Q. Okay, so then how can you now sit there and
9 testify that that's where the knife was when you just
10 testified you didn't know where the knife was?

11 A. Because the complainant stated that is why they
12 needed the police to try to help.

13 Q. And then the complainant said "I don't need help",
14 correct?

15 A. Right.

16 Q. Now, when we go to -- you now claim that there's
17 an emergency, right, right?

18 A. Right.

19 Q. All right. What was the emergency?

20 A. Possibly somebody armed with a knife.

21 Q. What evidence did you have that -- what time is
22 this that you go back up?

23 A. I couldn't tell you.

24 Q. 5:30?

25 A. I couldn't tell you what time.

1 Q. What evidence did you have that at 5 -- between
2 5:15 and 5:45, anyone had a knife?

3 A. Are you talking from when the initial call was
4 placed or are you talking -- you have to specify.

5 Q. You got to the house at -- you said by 5:10. You
6 were done with Mr. Mial by 5:13. What evidence from the
7 time you got there until 5:45 did you have that anyone
8 had a knife?

9 A. I didn't know if anyone had the knife at that
10 point still.

11 Q. And, you didn't know if Santa Clause was in the
12 closet, right?

13 A. Right.

14 Q. So, you -- so you're allowed to assume that even
15 though you're told no one has a knife, you believe it's
16 within your purview to assume that everybody's lying and
17 they must still have a knife and therefore you can make a
18 forceful entry?

19 A. I'm not assuming anything. I need to verify
20 information how that knife was taken away, was anyone
21 injured in taking that knife away.

22 Q. Do you agree you can't make any -- take any action
23 until you verify that information?

24 A. That's what I was attempting to do.

25 Q. That's not my question. Do you agree that you

1 cannot take any action until you verify that information?

2 MR. FRANCUZENKO: I'm going to object, Your
3 Honor. The term "action" is vague.

4 MR. PLOFCHAN: I'll rephrase, Your Honor.

5 THE COURT: Thank you.

6 BY MR. PLOFCHAN:

7 Q. Do you agree you cannot make a forceful entry into
8 the home until you verify that information?

9 A. I don't.

10 Q. So, you believe that you can make a forceful entry
11 into a home to investigate something?

12 A. Dependent upon what a call for service would be.

13 Not --

14 Q. Okay. Is there ever any number of calls that
15 could ever be made that said I don't need your help that
16 would allow you to say, okay, we don't have to make a
17 forceful entry?

18 A. You have to go over specifics. I don't --

19 Q. Have you ever had a call where someone said I
20 don't need your help and then you said okay. I'm not
21 making a forceful entry?

22 A. When they've answered the door and I've spoken
23 with them, yes.

24 Q. And Mr. Mial answered the door and you spoke with
25 him, correct?

1 A. No, sir.

2 Q. I thought you said he answered the door the first
3 time and you spoke with him?

4 A. We didn't have a conversation.

5 Q. You told us before that he told you he didn't need
6 your help and that you had a conversation about him
7 saying that you guys came right away. When I've asked
8 you to come before, you didn't come. How is that not a
9 conversation?

10 A. I wasn't speaking, sir. He was screaming at me.

11 Q. Now, he's screaming at you. You didn't mention
12 that before. What about the screaming -- now that this
13 is something new. What about the screaming at you -- let
14 me rephrase it. I'll withdraw and rephrase.

15 MR. FRANCUZENKO: Your Honor, I'll object.
16 It's argumentative.

17 MR. PLOFCHAN: That's why I'm rephrasing it,
18 Your Honor.

19 THE COURT: All right.

20 BY MR. PLOFCHAN:

21 Q. You agree, though, that even though you allegedly
22 now say that he was screaming at you, you still didn't
23 have a basis for an emergency when you left the first
24 time?

25 A. He was yelling, and I was trying to have a

1 conversation with him, yes.

2 Q. Ma'am, my questions are very simple. And I know
3 you want to get Mr. Francuzenko to help you tell what you
4 want to say.

5 MR. FRANCUZENKO: Objection, Your Honor.
6 That's gratuitous.

7 MR. PLOFCHAN: I think -- I'll withdraw that
8 comment. I'm strike that argument, Your Honor, or that
9 statement.

10 MR. FRANCUZENKO: -- be permitted --

11 MR. PLOFCHAN: And I apologize to the jury to
12 the extent that was wrong.

13 THE COURT: The court reporter can only take
14 down one person speaking at a time.

15 MR. PLOFCHAN: Yes, sir.

16 THE COURT: And the objection is sustained.

17 MR. FRANCUZENKO: Thank you.

18 BY MR. PLOFCHAN:

19 Q. Now, when you previously said that when you left
20 the house after the first time, you did not have a basis
21 for an emergency. It is now your position that he was
22 screaming at that time, correct?

23 A. Right.

24 Q. And, yet you still didn't have a basis for an
25 emergency, correct?

1 A. I didn't want to aggravate the situation any more
2 which is why I did not force entry. The entire call was
3 an emergency based on what the complainant had said.

4 Q. Now, I'm trying to get as to what is your filter
5 that -- what if a complainant says two times, there's --
6 I need help, I need help, and then says I don't need
7 help, do you assume they need help?

8 A. Yes.

9 Q. If they say I need help but then say 25 times I
10 don't need help, do you assume they need help?

11 A. Yes.

12 Q. Why?

13 A. Because they had stated originally that they
14 needed help.

15 Q. So why do you believe them the first time and not
16 the 25 times afterwards?

17 A. Because I need to understand why it changed. What
18 has changed.

19 Q. Where is your authority to insist that someone
20 explain why it has changed?

21 A. I need to verify information.

22 Q. I didn't ask that question, ma'am.

23 Where is your authority to insist that someone
24 explain why it has changed?

25 A. People do not have to speak with me if they do not

1 want to.

2 Q. Okay. And where is your authority that says that
3 if you don't have verification of an emergency, you can
4 still go into a house to look for more evidence? There
5 isn't any, is there?

6 A. I'm going to say based off the General Orders it
7 says right here, degree of urgency involved at that
8 point.

9 Q. Let's go over that. I just came over to look at
10 this. It says "deputy believes that someone is in
11 distress and in an immediate danger and in need of
12 assistance".

13 The only people you saw were not in distress,
14 correct?

15 A. Correct.

16 Q. And the only people you saw were not in immediate
17 danger and in need of assistance, correct?

18 A. Correct.

19 Q. And, you had no information that anyone else was
20 in the house, correct?

21 A. No.

22 Q. What information did you have that anyone else was
23 in the house?

24 A. Mr. Mial had stated that it was none of my
25 business who was in the house. So I did not know who was

1 there.

2 Q. So, you had no information that anyone else was in
3 the house. He didn't say my wife, my friend, my dog,
4 whatever. You just had no information, correct?

5 A. Correct.

6 Q. Okay. So then -- if you had no information, you
7 had no information to assume someone was in the house or
8 there was -- or that there were 40 people in the house?
9 You just didn't have any information, correct?

10 THE COURT: That's about four question.
11 Could you ask just one question.

12 MR. PLOFCHAN: Yes, sir, I apologize.

13 BY MR. PLOFCHAN:

14 Q. You didn't know if there was no one else in the
15 house, correct?

16 A. Correct.

17 Q. And you didn't know if they're 40 people in the
18 house, correct?

19 A. Correct.

20 Q. Is there any authority you have that allows you to
21 assume there are 40 people in the house that you can go
22 in and investigate?

23 A. Based off of the phone call and the armed with a
24 knife, that --

25 Q. The phone call said -- would you agree? Can we

1 disagree on this that when the phone call ended, you had
2 no one saying anyone was armed with a knife?

3 A. But I didn't know that for a fact.

4 Q. You didn't know for a fact that there was a knife
5 in the first place, did you?

6 A. Based on the call, that is what the --

7 Q. So you're going to believe the first half of phone
8 call and not the second half of the phone call?

9 A. I'm there to investigative the phone call.

10 Q. And therefore you didn't have any real knowledge
11 and yet you acted anyway, correct?

12 A. Correct.

13 Q. Okay. Now, let's draw your attention to the rest
14 of this. If you claim there's an emergency, okay, you
15 must have a reasonable belief that an emergency exists
16 and that deputies shall evaluate the following elements
17 when considering a warrantless entry, correct?

18 A. Correct.

19 Q. Shall says it's mandatory, right?

20 A. Correct.

21 Q. Which means that you have to make these
22 evaluations before you would make a warrantless entry,
23 correct?

24 A. Correct.

25 Q. You never evaluated the time required to obtain a

1 search warrant, did you?

2 A. No, sir.

3 Q. So, you didn't follow the General Order, didn't
4 you?

5 A. Step number A, I did not follow.

6 Q. Now, let's ask the other half of step number A,
7 the degree of urgency involved. You just testified that
8 you created the urgency, correct?

9 A. When the door shut, contact was done. We did step
10 back.

11 Q. Up to 35 minutes, correct?

12 A. No, sir.

13 Q. Well, let me ask you this. Would you agree that
14 based on all the reports and the evidence you provided in
15 discovery that the Taser was at 5:48 and some seconds?

16 A. That I don't know.

17 Q. When was the Taser deployed?

18 A. That I don't know.

19 Q. Would you agree it was after 5:30?

20 A. It would be after the second time we made contact.

21 Q. And would you agree that the Taser's deployed
22 within 30 seconds, no more than a minute of being in the
23 house?

24 A. Correct.

25 Q. Okay. So, if it is established that the Taser was

1 fired at 5:48, that means you entered the house about
2 5:47 and some seconds, correct?

3 A. It could be, yes, sir.

4 Q. Okay. So, if you left the house between 5:10 and
5 5:13 and you went in again at 5:47, you were about
6 35 minutes before one -- before going at the door and
7 then entering a second time, correct?

8 A. We were at the door prior to that.

9 Q. I understand, but prior to entering, you had
10 35 minutes, correct?

11 A. Right.

12 Q. All right. And, you -- and you created that
13 delay, correct?

14 A. No.

15 Q. Well, who forced you, if you felt there was an
16 emergency, who forced you to walk away at 5:13?

17 A. I chose to walk away.

18 Q. Okay. And then there was a delay because you
19 chose to walk away, correct?

20 A. Yes.

21 Q. So, is it fair to say you created the delay?

22 A. When I arrived back the second time, a delay was
23 not answering the door as well.

24 Q. Okay. But, when did you arrive back?

25 A. I couldn't tell you the --

1 Q. Was it any more than 10 minutes?

2 A. Prior to the door being opened, yes, sir.

3 Q. It was more than 10 minutes. You're sure about
4 that?

5 A. I would say approximately 10 to 15 minutes of
6 knocking on the door.

7 Q. Could it have been 5 to 10 minutes?

8 A. I would say longer, but I couldn't give you an
9 exact minute.

10 Q. Do you recall having testified about that before?

11 A. Yes, sir.

12 Q. And do you recall saying 5 to 10 minutes?

13 A. Ten to 15, I believe.

14 Q. That's what you think. We'll get to that in a
15 second.

16 Marshal, can I ask --

17 Deputy, I'm going to ask you to look at the last
18 line on the document and see if that refreshes your
19 recollection when the Taser went off.

20 MR. FRANCUZENKO: What document is that, Your
21 Honor?

22 MR. PLOFCHAN: It's your record, just to
23 refresh --

24 THE COURT: Show things to the opposing
25 counsel.

1 MR. PLOFCHAN: Marshal, I will show
2 Mr. Francuzenko, first.

3 MR. FRANCUZENKO: Your Honor, I object on a
4 lot of different grounds at this point. She didn't
5 prepare this document, so I'm not sure it's appropriate
6 for my client to --

7 THE COURT: Is there any limitation what can
8 be used to refresh recollection, Mr. Francuzenko?

9 MR. FRANCUZENKO: I'm sorry.

10 THE COURT: Is there any limitation on what
11 can be used to refresh recollection?

12 MR. FRANCUZENKO: No, but there needs to be
13 some foundation to be made that this document can refresh
14 recollection before being used.

15 THE COURT: Objection overruled. You can use
16 it. There's no limitation what can be used to refresh
17 recollection.

18 MR. PLOFCHAN: Thank you.

19 BY MR. PLOFCHAN:

20 Q. Does that refresh your recollection, the last
21 line? Does that refresh your recollection what time the
22 Taser was employed?

23 A. Dispatch entered it at that time.

24 Q. What time was that?

25 A. 17:48.

1 Q. Is that 5:48 and some seconds?

2 A. Yes.

3 Q. How many?

4 A. Forty-five, sir.

5 Q. So, almost 5:49, correct?

6 A. Correct.

7 MR. PLOFCHAN: Thank you. Marshal, next time
8 when you get up, I'll take it back. Thank you. I thank
9 you, sir.

10 BY MR. PLOFCHAN:

11 Q. Now, let's go to the second basis for an
12 emergency. "The possibility of danger to others,
13 including deputies left to guard the site".

14 What are you leaving deputies to guard the site
15 for? Is that to go get a warrant?

16 A. It could be.

17 Q. But, you can now do a warrant through dispatch,
18 right?

19 A. I don't know that.

20 Q. Okay. Were you trained in how to do a warrant?

21 A. At that -- I did take a class, yes, sir.

22 Q. Okay. And, you're aware through your training
23 that you had the ability to send a Teletype message to
24 the adult detention center and they can walk it down to
25 the magistrate, correct?

1 A. No, sir.

2 Q. Okay. Let me ask you this. Did you leave any
3 deputies to guard the site?

4 A. No, sir.

5 Q. Were there any deputies to leave to guard the
6 site?

7 A. There was deputies there, yes, sir.

8 Q. Okay. What evidence did you have that if you left
9 deputies there to guard the site that they would be in
10 danger?

11 A. None.

12 Q. Okay. What was the suspected offense that you
13 were going -- that you had reason to believe was
14 occurring at that moment?

15 A. Somebody was possibly armed with a knife.

16 Q. Okay. Now, the call came in at 5:03, right? And,
17 that's the last time there was any evidence that somebody
18 had a knife, correct?

19 A. Per the complaint, yes, sir.

20 Q. Okay. And through your observation you didn't
21 have any other information, right?

22 A. Right.

23 Q. So, and we know that no one had a knife according
24 to the complainant at 5:04, correct, by the time they
25 hung up, right?

1 A. With the complaint yes, sir.

2 Q. So, no one to your knowledge had a knife after
3 5:04, correct?

4 A. To my knowledge, no, sir.

5 Q. Okay. So, what was the suspected offense that was
6 currently ongoing at that time?

7 A. I didn't know for a fact --

8 Q. So you didn't know of any offense that was
9 currently ongoing at that time, correct?

10 A. I did not know for a fact if somebody was injured
11 in disarming the person with the knife.

12 Q. And you didn't know if there were Martians in the
13 living room, didn't you?

14 A. Correct.

15 Q. And you had no suspected offense that was
16 occurring at this time, correct?

17 A. I did not know.

18 Q. So, if you did not know, you had no suspected
19 offense that was occurring, correct?

20 A. Suspected -- I did not know if a person had been
21 injured in disarming of the knife, anything.

22 Q. Well, what suspected offense do you claim that you
23 had?

24 A. Possibly somebody armed with a knife.

25 Q. Is it illegal to be armed with a knife?

1 A. To be armed with a knife to attempt to hurt
2 somebody, yes, it is.

3 Q. No, I didn't ask you that question. Is it illegal
4 to be armed with a knife?

5 A. You have to tell me what your definition of
6 armed --

7 Q. Well, if I have a knife in my hand, is it illegal?

8 A. No.

9 Q. As a matter of fact, people have knives in the
10 kitchen drawers all the time, correct?

11 A. Correct.

12 Q. That's not illegal, correct? All right. So, is
13 an offense to stand in the living room with a knife in
14 your hand?

15 A. To stand with it in your hand, no, sir.

16 Q. Okay. And, if there's no evidence of somebody
17 actually being struck by a knife, is there offense if
18 somebody threatens or uses it at somebody but doesn't
19 strike?

20 A. Yes, sir.

21 Q. Okay. Is there -- what evidence did you have
22 between 5:04 and 5:49, that there was anybody in that
23 house threatening to use a knife on themselves or someone
24 else?

25 A. I did not know.

1 Q. Okay. So you had no evidence, correct?

2 A. Correct.

3 Q. Okay. So then we didn't have a suspected offense,
4 and we didn't have any indication that there was anything
5 involving violence, did we?

6 A. The notes of the call indicated there was some
7 sort of violence. Somebody armed with a knife.

8 Q. But you just told me it's not illegal to the armed
9 with a knife?

10 A. Somebody's calling 911 --

11 Q. And they -- well --

12 A. -- and stating someone is armed with a knife.

13 Q. Isn't it a fact that they said, I need some
14 assistance in -- sending someone to assist in taking a
15 knife from an individual. That's all they said.
16 Correct?

17 A. Per those notes, yes, sir.

18 Q. Okay. There was never any communication that
19 someone was armed with a knife, was there?

20 A. Our dispatch had stated that somebody had a knife.
21 The word armed was not --

22 Q. Did you produced a video -- a tape recording of
23 this conversation, that somebody had a knife?

24 A. Dispatch had stated --

25 Q. I'm asking did you produce a recording of that?

1 A. No, sir.

2 Q. Okay. Now, let me ask you this. Wouldn't it, in
3 order to be a crime of violence, have to be -- go beyond
4 merely saying someone had a knife and they would have had
5 to say had a knife and threatened to harm one person or
6 another in order for it to be a crime?

7 A. I'm not understanding.

8 Q. Just by saying someone has a knife does not state
9 a crime, correct?

10 A. Correct.

11 Q. You actually would have had to say has a knife and
12 is threatening to hurt themselves, or has a knife and has
13 threatened to hurt someone in order to be a crime,
14 correct?

15 A. Correct.

16 Q. And you never got that from dispatch, did you?

17 A. I would say the 911 call just calling for
18 assistance in that type of situation would be enough
19 because if they were cutting in the kitchen, they're not
20 going to call asking to ask somebody to come and help
21 take the knife away.

22 Q. How do you know. What if -- are you trying to say
23 what if there was somebody who --

24 THE COURT: Excuse me.

25 MR. PLOFCHAN: Hypothetical. I'll keep to

1 this case.

2 THE COURT: I'd rather you focus on this case
3 as opposed to hypotheticals.

4 MR. PLOFCHAN: Thank you, Your Honor.

5 BY MR. PLOFCHAN:

6 Q. No caller or dispatch ever identified to you that
7 someone was threatening to use a knife against themselves
8 or any other person, did they?

9 A. No, sir.

10 Q. Okay. What knowledge did you have about any guns
11 in the house?

12 A. None.

13 MR. FRANCUZENKO: Your Honor, I'm going to
14 object. Now we're getting really beyond. There was
15 never any discussion of a gun.

16 MR. PLOFCHAN: Your Honor, the General Order
17 says whether deputies reasonably believe that any person
18 may be armed and I'm just going through the first guns
19 and I was going to ask about knives and anything else
20 that was armed.

21 MR. FRANCUZENKO: Your Honor, at this point,
22 maybe we can take a break. I'd like to be heard on this
23 point and some additional points.

24 THE COURT: All right. I'm going to let the
25 jury step out for a few minutes and take a matter outside

1 your presence for a few moments.

2 (Jury excused from courtroom at 4:33 p.m.)

3 THE COURT: You can have a seat.

4 MR. FRANCUZENKO: Your Honor, we're going
5 well beyond the scope of the facts in this case. There
6 is questions about guns.

7 You know, this is a problem that I have with
8 the Orders, Your Honor, and quite frankly, although I
9 don't want to do this, these General Orders are now the
10 focus of this case and not the United States
11 Constitution. And there's case law that makes it clear
12 that these folks are not supposed to be judged on the
13 orders. This has become -- this whole area of testimony
14 is a quiz about the orders and that's simply not what
15 this is about.

16 I quite frankly think that I'm entitled to a
17 mistrial at this point because there's been so much
18 that's gone on in the last hour and a half about the
19 orders, whether certain parts of it are complied or not
20 complied. That's not what the standard is. It's not
21 even the standard of care if this were a negligence case.

22 So, Your Honor, I object to the line of
23 questioning about the guns. I object to the line of
24 questioning about the orders. I think at this point,
25 this jury and this case has been tainted by this whole

1 line of questioning.

2 MR. PLOFCHAN: In response, Your Honor, the
3 General Order articulates the standards of exceptions to
4 the Fourth Amendment that were originally identified in
5 *Peyton* and it's progeny in that the sanctity of the home
6 without a warrant cannot be passed unless there's an
7 exception.

8 The federal cases have identified some rules
9 and that's where we put the *Vera v. Commonwealth* case on
10 that one slide I was thinking about because they
11 summarized a series of them. I didn't include all the
12 federal citations in that case.

13 One of the citations on an emergency is --
14 they're a whole series of them, whether you're in hot
15 pursuit, whether you think contraband will be destroyed.
16 These four elements in the General Order are whether
17 there is an emergency. And this officer has now said
18 that she believes she's justified on an emergency and
19 I've gone through these things and I'm asking her do you
20 have any evidence that anyone was armed and the first
21 question I asked was about armed with guns. I was going
22 to ask about armed with knife or any other weapons and
23 that's it.

24 THE COURT: Let's focus if you would. Do you
25 have any facts to suggest that there is anything more

1 involved here than a 911 call with reference to a knife?
2 There's no fact at basis for bombs, flame throwers, guns,
3 anything else; is that right?

4 MR. PLOFCHAN: That's correct, and I just
5 want that admission.

6 THE COURT: Well, it would be different if it
7 was brought up on cross-examination by her counsel that
8 she had that in her mind. But right now, you're going
9 well beyond what the --

10 MR. PLOFCHAN: Okay.

11 THE COURT: -- what the facts are.

12 Now, I want to focus on the question raised
13 by Mr. Francuzenko and that is the General Orders. Is
14 your case based on the General Orders or is your case
15 based on the Fourth Amendment to the United States?

16 MR. PLOFCHAN: Fourth Amendment to the United
17 States, Your Honor.

18 THE COURT: Well, you are spending an
19 inordinate amount of time on the General Orders. I let
20 you go on again for the reason I stated previously. Some
21 evidence are what the officer knew or should have known
22 about the Fourth Amendment in general and their
23 obligation to adhere to the law.

24 But I intend to instruct the jury that
25 deviation in any material respect from the General Order

1 does not mean that the deputies are liable. It's only
2 that they violate the Fourth Amendment as that
3 instruction I'll give them.

4 So, how much more do you have with this
5 General Order? Are you going to go --

6 MR. PLOFCHAN: Actually, Your Honor --

7 THE COURT: There are three or four more
8 other General Orders. You want to go through each one of
9 them, too?

10 MR. PLOFCHAN: Only tangentially, Your Honor.
11 There was just that last point and then I'm going to have
12 some discussion about the second entry and what happened
13 factually, and that's it.

14 MR. FRANCUZENKO: Your Honor, I don't think
15 an instruction is going to cure it. I formally make my
16 motion at this point. And I don't want to waste any more
17 of this Court's time.

18 I think the horse is out. We made our
19 objections initially. The last hour plus has been a quiz
20 about these orders, whether she knows them, how
21 they're -- how she's violated them in terms of -- in
22 terms of the facts of this case. And I don't think the
23 instruction's going to cure it.

24 MR. PLOFCHAN: Your Honor, if I may respond.
25 The last hour has been a discussion of what facts she

1 could possibly rely on to be an emergency which is an
2 exception to the warrant requirement under the Fourth
3 Amendment. And I was trying to define what is the
4 emergency and what facts had changed. That's where we're
5 getting at. You left. You turn around with an intent to
6 go. No facts had changed. What is the basis for the
7 exception to the Fourth Amendment? That's what we were
8 exploring the entire time.

9 And I don't think there's any basis for a
10 mistrial just because he hasn't liked the answers he
11 gotten in the testimony.

12 This is the whole issue. Was there a basis
13 under an exception to the Fourth Amendment to go into the
14 house and when they can't identify any facts that have
15 changed or facts to establish an emergency, that helps --
16 that's part of Mr. Mial's case. I don't think there's
17 any basis for a mistrial in this matter.

18 THE COURT: Let the record reflect this
19 matter is before the Court on the defendant's motion for
20 mistrial based upon the defendant's argument that
21 plaintiff has spent time questioning the officer on the
22 stand, Ms. Jennifer Forsch, about her knowledge of the
23 General Orders of the Loudoun County Sheriff's Office.

24 And the question presented is whether
25 reference to the General Orders and testimony about the

1 General Orders along with factual information what she
2 knew or did not know at the time of this incident was
3 relevant and somehow prejudiced the defendant in some way
4 that would prevent the jury from considering the case
5 under Fourth Amendment.

6 My judgment is this. In order for the jury
7 to ascertain whether or not there's been a violation of
8 the Fourth Amendment, they must have some knowledge from
9 the Court instruction of what the Fourth Amendment is.

10 And in *Graham versus O'Connor*, the Court will
11 instruct the jury that the jury must consider what was
12 objectionably reasonable and whether or not the force
13 used was necessary under the circumstances.

14 One of the factors that bears in this case's
15 consideration is what the officers knew about the Fourth
16 Amendment parameters in terms of entry of a home without
17 a warrant when the Fourth Amendment clearly states you
18 may not enter a home without a warrant. And also the
19 issue here is, it seems to me, whether or not the officer
20 had some reasonably cause, based upon their observation
21 of the facts, to enter the home.

22 That is a question of fact for the jury. The
23 jury cannot be unguided as to what the officer knew or
24 had reason to know. And the General Orders in my view
25 support what an officer employed -- and this officer's

1 been employed for several years with the Loudoun County
2 Sheriff's Office, knows or ought to know about the Fourth
3 Amendment.

4 A moment ago she was asked about getting a
5 warrant and whether or not she can get a warrant. And I
6 don't know if she knows or not, but I have the impression
7 that's something you expect an officer to know.

8 Can you get a warrant over the phone or do
9 you have to go down to the magistrate judge's office in
10 every instance? That's a very basic matter. I don't
11 know if she knows or not.

12 But it seems to me in order to ascertain what
13 the jury can weigh in terms of reasonableness of the
14 action, they must have some standard.

15 I have decided that one of the things they
16 may consider along with other information that the
17 defendant will offer about their training and their
18 background, all those things bear on the issue of
19 objective reasonableness under *Graham versus O'Connor*.
20 So the motion for mistrial will be denied.

21 You can bring our jury back. Thank you.

22 (Jury brought into the courtroom at 4:41
23 p.m.)

24 THE COURT: You may be seated.

25 All right, counsel, you may proceed.

1 MR. PLOFCHAN: May it please the Court.

2 BY MR. PLOFCHAN:

3 Q. Now, Officer Forsch, what I was -- I'm going to
4 ask you, was there anything within your knowledge other
5 than this initial phone call that you had that would have
6 indicated that there was any weapon or threatened
7 violence towards anyone?

8 A. No.

9 Q. Okay. Can you explain your understanding of the
10 Fourth -- the exceptions to a requirement for a warrant
11 to enter a house -- to enter a house?

12 A. Are you looking for exigent circumstances?

13 Q. What is it your understanding is? When are you
14 allowed to enter a house when you don't have a warrant?

15 A. It would be either invited in. It would be if
16 there is a possibility of danger to some -- to occupants
17 of that house, to preserve life, to help if anyone is
18 injured inside the residence.

19 Q. Okay. What are the limits to your determination
20 of the possibility of danger?

21 A. What do you mean, sir?

22 Q. Well, you would agree that it could be dangerous
23 for someone to use too hot water in a bath tub.

24 THE COURT: I want you to focus in this case.

25 MR. PLOFCHAN: I'm trying to figure -- yes,

1 sir.

2 BY MR. PLOFCHAN:

3 Q. What are your limits in terms of -- what, let me
4 rephrase it.

5 Thank you, Your Honor. Withdraw that question.

6 What do you need to know in order to make a
7 determination that there is a danger -- a possibility of
8 danger that would allow you to enter -- forcibly enter a
9 house without a warrant?

10 MR. FRANCUZENKO: Your Honor, I'm going to
11 object. That's a general question. Again, do you want
12 to go back to the case and what her thought process was?
13 In this case, I understand -- I'm going to object.

14 THE COURT: Sustained.

15 MR. PLOFCHAN: Okay. Let me see if I can
16 rephrase it this way.

17 BY MR. PLOFCHAN:

18 Q. Other than the phone call, what did you know when
19 you decided to go back up to the house that gave you an
20 indication of a possibility of danger that would have
21 justified a warrantless entry into Mr. Mial's house?

22 MR. FRANCUZENKO: I'm going to object to the
23 form. That's compound, possibly triple compound.

24 THE COURT: All right. Asked and answered.
25 Let's move on to something else if you have additional

1 questions.

2 MR. PLOFCHAN: I do.

3 BY MR. PLOFCHAN:

4 Q. Did you go up to the house secondly -- the second
5 time by yourself?

6 A. No, sir.

7 Q. Who went with you?

8 A. Sergeant Holloway and Deputy Ferguson.

9 Q. Okay. Did you all three go to the door?

10 A. Yes, sir.

11 Q. Okay. When did you do that?

12 A. When we walked back up to the residence.

13 Q. Okay, and how far away was it? When you were at
14 the bottom of the driveway, how far away was that from
15 the front door?

16 A. Maybe 50 feet.

17 Q. Okay. And, what happened when all three of you
18 got back up to the porch?

19 A. Sergeant Holloway knocked on the door.

20 Q. Okay. And, did anyone come and answer?

21 A. No, sir.

22 Q. Ever?

23 A. Eventually, yes, sir.

24 Q. Okay. But not right away. Okay. Are there
25 windows on the side of the door?

1 A. Yes, sir.

2 Q. Did you look in the windows?

3 A. Yes, sir.

4 Q. Did you see any calamity, any violence, anything
5 going on?

6 A. No, sir.

7 Q. Okay. Did you see anybody?

8 A. Yes.

9 Q. What did you see?

10 A. I saw a male subject sitting in an office.

11 Q. Was that Mr. Mial?

12 A. Later determined, yes, sir.

13 Q. Okay. Well, how far were you away was his office?

14 A. Maybe 20, 25 feet.

15 Q. Okay -- how could you tell it was a male but not
16 tell it was Mr. Mial?

17 A. I did not know his name.

18 Q. Okay. But it was the same man who had come to the
19 door?

20 A. Correct.

21 Q. So you saw the person who had identified himself
22 as the complainant come to the door? Who -- I'm sorry.
23 You saw the person who had identified himself as the
24 complainant when he came to the door. He was sitting in
25 an office, correct?

1 A. Correct.

2 Q. And you would agree he doesn't have to answer his
3 door?

4 A. Correct.

5 Q. Did you see any other physical sign of trauma or
6 distress or an emergency?

7 A. No, sir.

8 Q. Did you see any other physical sign of anything
9 that indicated that there was any danger within the
10 residence?

11 A. No, sir.

12 Q. Okay. Did you speak to any neighbors to see
13 whether or not they had heard anything?

14 A. I did not.

15 Q. Okay. Were you aware if anyone had spoken to any
16 neighbors?

17 A. I do not know.

18 Q. Okay. When you were there with Sergeant Holloway
19 and Deputy Ferguson, when there was no response, what did
20 you do?

21 A. I continued to knock on the door.

22 Q. Okay. So, did the Sergeant knocked the first time
23 and you continued it or you continued all the time?

24 A. The Sergeant knocked the first time.

25 Q. Okay, and how often were you knocking?

1 A. It was continuous.

2 Q. So you just, (indicating) without stopping until
3 somebody came?

4 A. If there was a break, it was a short break.

5 Q. Okay. Now, after the first minute, why didn't you
6 realize he didn't want you -- he didn't want to answer
7 the door?

8 A. I needed to make contact with him.

9 Q. Is it you needed or you wanted to?

10 A. Needed to.

11 Q. What was -- was your need to make contact or enter
12 the house to investigate?

13 A. Yes.

14 Q. Okay. So you -- it's not that you needed to make
15 contact. It's your position you needed to enter the
16 house to investigate, correct?

17 A. No, sir.

18 Q. Okay. You had the intent if he opened the door to
19 enter the house. Is that correct?

20 A. To investigate, sir.

21 Q. But to enter the house, correct?

22 A. Yes, sir.

23 Q. What information at that point in time were you
24 relying on to say that you did not have to abide by the
25 Fourth Amendment's requirement to have a warrant to enter

1 that house?

2 A. Are you speaking before he opened the door or
3 after he opened the door? Can you clarify timeframe for
4 me?

5 Q. When you went back up and you're knocking and you
6 have the intent to enter the house, what information are
7 you relying on at that point in time that would justify
8 an exception to the Fourth Amendment's requirement for a
9 warrant?

10 A. He would not answer the door. We knew based on
11 his statement somebody else was in the residence. They
12 were not answering the door as well. Unknown if they
13 were injured.

14 Q. I thought you told me a few minutes ago that when
15 you went back up to the house, you didn't know if there
16 were one person or 40 other people. You didn't know if
17 there was someone else in the residence, correct?

18 A. Correct.

19 Q. Okay. So, what fact are you relying on that
20 provides an exception to the warrant requirement of the
21 Fourth Amendment?

22 A. That possibly somebody could be injured.

23 Q. Would you agree that a possibility is not a fact?

24 A. Yes.

25 Q. Okay. So, I'm asking you, what fact are you

1 relying on that would justify an exception to the warrant
2 requirement of the Fourth Amendment?

3 A. Him not answering the door, unknown call. We do
4 know other people in the residence and no one answering
5 the phone.

6 Q. What part -- when -- you said you could see him.
7 Did you see the kids?

8 A. Yes, sir.

9 Q. Okay. Did you have any indication that anything
10 had happened to the kids?

11 MR. FRANCUZENKO: Objection, asked and
12 answered, Your Honor.

13 MR. PLOFCHAN: This was a very specific
14 question. I don't think --

15 THE COURT: Overruled.

16 BY MR. PLOFCHAN:

17 Q. Okay. And he was not engaged in any violent
18 behavior or doing anything but sitting in an office,
19 correct?

20 A. Correct.

21 Q. He was actually on the phone, correct?

22 A. Correct.

23 Q. So if he's on the phone with someone else,
24 wouldn't that have provided an explanation as to why he
25 didn't answer the phone when you were trying to call?

1 A. For him, yes, sir.

2 Q. Okay. And you knew that. You knew he was on the
3 phone with someone else while you were trying to call,
4 correct?

5 A. On the phone, yes, sir.

6 Q. So him not answering the phone, would you agree,
7 is not a fact that could justify your violating the
8 Fourth Amendment's warrant requirement?

9 A. For him not answering the phone?

10 Q. For him not answering the door.

11 A. You had asked for him not answering the phone
12 because he was on it?

13 Q. Right. Well, if he's on the phone, would it even
14 be ringing in the house? If -- would another number
15 be -- would the phone be ringing if somebody's on it?

16 A. That I don't know.

17 Q. Were you calling or somebody else calling?

18 A. I was not calling.

19 Q. Do you know if it was ringing or there was a busy
20 signal?

21 A. I do not know.

22 Q. Okay. So then based on your observations and your
23 current -- and your knowledge at that moment in time,
24 him -- your observations of him did not provide a factual
25 basis that there was an emergency or some other exception

1 to the warrant requirement under the Fourth Amendment,
2 correct?

3 A. For him, correct.

4 Q. Okay. And you had no knowledge of anyone else
5 other than the children being in the house, correct?

6 A. Correct.

7 Q. And, you don't know if the children had gone out
8 the back door at that time, do you?

9 A. Correct.

10 Q. So, then you don't know if anyone's in the house
11 at that point in time, correct?

12 A. Well, I could see --

13 Q. Other than Mr. Mial, correct?

14 A. Correct.

15 Q. So, you do not have any facts that you could rely
16 on that would suggest that anyone was in danger or there
17 was any emergency that would justify an exception to the
18 requirement of the Fourth Amendment that you have a
19 warrant, correct?

20 A. Facts no.

21 Q. Okay. Now, you had some guessing or some
22 speculation, correct?

23 A. Correct.

24 Q. Okay. Are you aware of any authority that says
25 that you -- your guessing or speculation can justify a

1 violation of the Fourth Amendment?

2 A. No.

3 Q. Okay. Now, eventually, you were actually -- let
4 me rephrase it. You're standing at the door and the door
5 knob is at the right?

6 A. Correct.

7 Q. And you're standing there knocking and have your
8 hand on the door knob?

9 A. No.

10 Q. Where was your hand?

11 A. I could not tell you, but it was not on the door
12 knob.

13 Q. Were you close to the door jam? Where were you
14 standing?

15 A. Probably 2 to 3 feet from the door.

16 Q. Two to 3 feet out from the door?

17 A. Correct.

18 Q. And where was Deputy Ferguson?

19 A. To my left.

20 Q. Was he immediately, or was he closer back, closer
21 to the door?

22 A. You have to ask him exactly where he was standing.
23 I know he was to my left.

24 Q. Okay. And after some period of time, you saw
25 Mr. Mial approach the door, correct?

1 A. Correct.

2 Q. And did you announce over the radio that he's
3 coming to the door?

4 A. I don't know.

5 Q. Okay. Did someone announce that he's coming to
6 the door?

7 A. I don't know.

8 Q. Okay. Do you know if Deputy Ferguson announced
9 that?

10 A. I don't know.

11 Q. And he comes to the door. And how was he
12 positioned when he comes to the door?

13 A. He opened the door and stood halfway behind it.

14 Q. Okay. So, if this is the door in front of me, and
15 if from his side it would open on the left -- the left
16 and open to the right, correct?

17 A. Correct.

18 Q. All right. And he has his hand on the door knob
19 and he stands -- and how far does he open it?

20 A. Enough that I could see half of his body.

21 Q. Okay. So, if this was the door right here, he --
22 and this is the front of the door, he kind of opens it
23 and stands like this so you can see half of his body,
24 correct?

25 A. Correct.

1 Q. Where are his hands?

2 A. That I don't know.

3 Q. Okay. Did you watch him come to the door?

4 A. Yes, sir.

5 Q. You didn't see any weapons or anything on him, did
6 you?

7 A. Not in his hands, no, sir.

8 Q. Okay. So, did he have one hand up on the -- the
9 door frame?

10 A. I don't know.

11 Q. Okay. Were you looking at where his hands are?

12 A. I was.

13 Q. Okay. Did you engage in any conversation?

14 A. I did not speak, no, sir.

15 Q. Okay. Who spoke?

16 A. Deputy Ferguson and Mr. Mial.

17 Q. And how long did you engage in conversation?

18 A. Maybe 30 seconds.

19 Q. Okay. Did Deputy Ferguson ever ask to enter the
20 house?

21 A. No, sir.

22 Q. So, again, nobody has asked to enter the house
23 yet, right?

24 A. Right.

25 Q. Did you ever tell him that you're going to enter

1 the house if he doesn't let you in the house?

2 A. No, sir.

3 Q. Okay. Did he -- did Deputy Ferguson ask him to
4 bring anyone in the house to the door?

5 A. I don't know his exact words, sir.

6 Q. Okay. So, to your knowledge at this point in
7 time, you don't have -- anyone asking him to bring people
8 in the house to help you investigate or to allow you in,
9 correct?

10 A. I had asked that on the first contact.

11 Q. You had asked him to bring people to the door but
12 not to go in, correct?

13 A. Correct.

14 Q. And to your knowledge, nobody re-asked it at this
15 new encounter possibly a half hour later, correct?

16 A. Right.

17 Q. So, he's having a conversation and is Mial telling
18 him leave me alone; go away? What is he saying?

19 A. He's stating that he doesn't need us and that he
20 started screaming about the Sheriff's Office.

21 Q. Okay. He's not happy with the Sheriff's Office,
22 right?

23 A. Right.

24 Q. And, how long -- you say this conversation last
25 about 30 seconds?

1 A. Possibly.

2 Q. Okay. Does he make any other move?

3 A. He does.

4 Q. What does he do?

5 A. To shut the door.

6 Q. So, if you can't see his hands, how do you know
7 he's trying to shut the door?

8 A. Because the door moved towards us.

9 Q. So the door moves towards you. What facts are you
10 in possession of right now at that instant that would
11 justify an exception to the Fourth Amendment's
12 requirement of having a warrant before you enter that
13 house?

14 A. Trying to verify facts.

15 Q. Well, so you don't have any facts, correct?
16 You're just trying to verify facts. Is that a fair
17 statement?

18 A. Correct.

19 Q. So, then you had nothing but potential speculation
20 that you want to explore, correct?

21 A. Correct.

22 Q. And yet, you don't know of any authority that you
23 can rely on that says, having potential speculation that
24 you want to explore is a basis under one of the
25 exceptions to the Fourth Amendment warrant requirement,

1 correct?

2 A. Correct.

3 Q. All right. And he starts to close the door and
4 what do you do?

5 A. I pushed against the door.

6 Q. Did you cross the threshold?

7 A. Yes.

8 Q. So you entered the house at that moment?

9 A. Yes, sir.

10 Q. Okay. And you had been trained in the Fourth
11 Amendment, correct?

12 A. Yes, sir.

13 Q. And, you knew at that moment you entered the
14 house, that you needed a warrant or an exception to the
15 warrant requirement in order -- or to be invited in,
16 right?

17 A. Right.

18 Q. Okay. And, you didn't have a warrant, correct?

19 A. Correct.

20 Q. And you had no facts that established an exception
21 to the warrant requirement, correct?

22 A. Facts.

23 Q. No facts?

24 A. To be verified, no.

25 Q. And you had -- you were not invited in?

1 A. Correct.

2 Q. Okay. Did Deputy Ferguson enter?

3 A. Yes.

4 Q. Okay. To your knowledge, did he have any facts
5 different than what you possessed?

6 A. To my knowledge, no.

7 Q. Okay. So then, he would not have had any facts
8 that he could rely on as an exception to the Fourth
9 Amendment requirement to have a warrant to go into that
10 house, correct?

11 A. That I don't know if he had different facts.

12 Q. But assume -- let me rephrase it. To your
13 knowledge, since you don't believe he had any other facts
14 than what you had, would you agree that he did not have
15 any facts that would have justified an exception to the
16 Fourth Amendment requirement?

17 A. Right.

18 Q. Okay. Now, was there somebody else there at the
19 door who crossed the threshold?

20 A. At that time, no.

21 Q. Well, how much time passed before there was
22 somebody?

23 A. That I don't know.

24 Q. Okay. Where was Deputy Altom?

25 A. I do not know.

1 Q. Did you ever see him?

2 A. Eventually.

3 Q. Okay. Now when you and -- where was Deputy Sayre?

4 A. I did not see him.

5 Q. At all?

6 A. At that point, no.

7 Q. Okay.

8 THE COURT: Counsel, what we're going to do,
9 we're going to stop right here and resume tomorrow
10 morning at 10 o'clock.

11 Ladies and gentlemen, please do not discuss
12 the case nor permit the case to be discussed in your
13 presence. Leave your notes in the jury deliberation room
14 and don't do any research on the case.

15 We will resume tomorrow at 10 o'clock.
16 You're free to leave.

17 THE COURT: We're in recess.

18 (Proceedings concluded at 5:01 p.m.)
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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United State District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the testimony in the case of Marcus Mial vs. Stephen O. Simpson, et al.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said testimony, and that the foregoing pages, numbered 1 to 107, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 6th day of August, 2015.

/s/
Renecia Wilson, RMR, CRR
Official Court Reporter